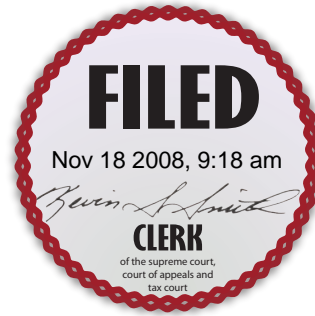


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KIMBERLY BALDWIN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 64A03-0805-CR-225

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable Roger V. Bradford, Judge
Cause No. 64D02-0202-MR-1643

November 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Kimberly Baldwin appeals her eighty-five-year sentence for murder and Class A felony conspiracy to commit murder. We affirm.

Issues

Baldwin presents two issues for our review, which we restate as:

- I. whether the trial court abused its discretion by sentencing her to consecutive terms; and
- II. whether the eighty-five-year sentence is appropriate in light of her character.

Facts

A jury convicted Baldwin of murder and Class A felony conspiracy to commit murder on December 30, 2004. The trial court found the use of an illegal weapon and the high degree of planning and premeditation as aggravators. It sentenced Baldwin to sixty-five years for the murder and a consecutive fifty years for the conspiracy. Baldwin appealed to this court and we found that the enhanced sentences violated Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004), and remanded for resentencing. See Baldwin v. State, No. 64A-3-05-04-CR-157, slip. op. at 2 (Ind. Ct. App. Nov. 29, 2005).

Prior to the resentencing hearing, Baldwin filed a petition requesting that the trial court reconsider statutory mitigating factors. The trial court denied the motion and proceeded to resentence Baldwin on March 10, 2008. The trial court sentenced Baldwin to fifty-five years for the murder and thirty years for conspiracy to commit murder, to be served consecutively. This appeal followed.

Analysis

I. Consecutive Sentences

Baldwin contends on appeal that the trial court abused its discretion in sentencing her to consecutive sentences. She argues that her sentences should be revised to be served concurrently. Sentencing decisions are within the trial court's discretion, which includes determining whether to impose consecutive sentences on multiple convictions. Smith v. State, 881 N.E.2d 1040, 1049 (Ind. Ct. App. 2008).

It is well-settled that in order to impose consecutive sentences, a trial court must find the existence of one or more aggravating circumstances that outweigh any mitigating circumstances. See e.g., Marcum v. State, 725 N.E.2d 852, 864 (Ind. 2000). Baldwin mistakenly contends that Blakely prevents that trial court from imposing consecutive sentences here.¹ Contrary to Baldwin's assertion, our supreme court has held that "a trial court's authority to order consecutive sentences was not affected by Blakely." Estes v. State, 827 N.E.2d 27, 29 (Ind. 2005) (citing Smylie v. State, 823 N.E.2d 679, 686 (Ind. 2005)). "[E]ven if an aggravator is not found beyond a reasonable doubt, and thus is incapable of supporting an enhanced sentence, the aggravator may still be used to impose consecutive sentences." Neff v. State, 849 N.E.2d 556, 562 (Ind. 2006) (citing Smylie, 823 N.E.2d at 686). Indiana Code Section 35-50-1-2(c) provides that the trial court shall determine whether the terms of imprisonment shall be served concurrently or

¹ Baldwin relies on a case from the Oregon Supreme Court, Oregon v. Ice, 170 P.3d 1049 (Ore. 2007), cert. granted, 128 S. Ct. 1657 (2008), which is currently pending before the United States Supreme Court to support her position that this is an "unsettled issue presently in the law" that requires revision of her sentence. Appellant's Br. p. 6. Until the United States Supreme Court issues an opinion, our supreme court's holding in Smylie controls. See Henderson v. State, 825 N.E.2d 983, 988 n.3 (Ind. Ct. App. 2007) (noting that the Court of Appeals is bound by Indiana Supreme Court precedent), trans. denied.

consecutively, and it may consider the aggravating and mitigating circumstances in making that determination.

The trial court found two aggravators at the original sentencing and pronounced at the resentencing that “those aggravators still exist” and justified the consecutive sentence. Tr. p. 8. The trial court previously found “no credible evidence of any mitigating circumstances” at the original sentencing. App. p. 63. The trial court did not abuse its discretion in sentencing Baldwin to consecutive sentences for her convictions.

II. Appropriateness

Baldwin argues that the eighty-five year sentence is inappropriate in light of her character. Baldwin presents no evidence of her character in the record on appeal. She contends that by denying her petition to reconsider mitigating factors, the trial court effectively overlooked all mitigating factors and entered an inappropriate sentence. This argument does not meet Baldwin’s burden on appeal.

Indiana Appellate Rule 7(B) provides that we may revise a sentence if we find that it is inappropriate in light of the nature of the offense and the character of the offender. Although Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

“[A] revision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of his [or her] offenses and his [or her] character.” Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008). Baldwin presents no cogent argument regarding the inappropriateness of the sentence in light of the nature of the offenses. It is within this court’s discretion to determine that Baldwin has waived her request for a Rule 7(B) review because she failed to present cogent argument for both elements. See id. Waiver notwithstanding, Baldwin has presented no evidence regarding her character or nature of the crime that would persuade us to lessen her sentences from the presumptive terms. Baldwin submits her motion to reconsider, which includes a cursory list of potential mitigators, but no credible evidence accompanies this motion and only small excerpts of the transcript of the original sentencing are included. The eighty-five year sentence is appropriate.

Conclusion

The trial court did not abuse its discretion in ordering Baldwin to consecutive sentences. Baldwin did not meet her burden to prove the eight-five year sentence is inappropriate. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.